

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CENTERPOINT PROPERTIES TRUST,)	
)	
Plaintiff,)	
)	
v.)	Civil No. CV-13-____
)	
KARL S. NORBERG and,)	
PAMELA W. GLEICHMAN)	
)	
Defendant.)	

NOTICE OF REMOVAL OF CIVIL ACTION

The United States of America, on behalf of the United States Department of Agriculture, hereby removes the above-captioned case for the following reasons:

1. On March 27, 2013, the Penobscot County Superior Court issued a summons on trustee process to TD Bank, trustee, ordering the attachment on trustee process of up to \$78,000,000 of property belonging to Karl S. Norberg or Pamela W. Gleichman (“Defendants”). That summons is attached hereto as Exhibit A.

2. This removal is brought pursuant to 28 U.S.C. §§ 1441(a), 1442(a)(1) and 1446(a).

3. Defendants own and operate Elsemore Estates, a multi-family housing development in Portland, Maine.

4. Pursuant to the Consolidated Farm and Rural Development Act, 7 U.S.C. § 1921 *et seq.*, Defendants have taken out loans from the Rural Housing Service (“RHS”) of the United States Department of Agriculture (“USDA”) to finance the operation and maintenance of Elsemore Estates.

5. As a condition of making those loans, USDA regulations required Defendants to open a reserve account to pay for maintenance of and capital improvements to Elsemore Estates.

6. On August 8, 2006, Defendants opened a reserve account at TD Bank to pay for maintenance of and capital improvements to Elsmore Estates.

7. The reserve account specifically requires that any withdrawal from the account be accompanied by two signatures, one of which must be of a USDA Authorized Signer.

8. Under USDA regulations governing the use of reserve accounts, the funds deposited in Defendants' Elsmore Estates reserve account at TD Bank may only be used for particular purposes that, in RHS's judgment, "promote the loan purposes, strengthen the security or facilitate, improve, or maintain the housing and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security." 7 C.F.R. §3560.306(g).

9. Accordingly, the United States, through its component agency, RHS, maintains a property interest in the funds contained in Defendants' Elsmore Estates reserve account at TD Bank.

10. On March 29, 2013, in response to the Penobscot County Superior Court's summons on trustee process, TD Bank erroneously garnished Defendant's reserve account for Elsmore Estates.

11. TD Bank has represented to USDA that it will not free Defendant's Elsmore Estates reserve account absent a court order.

12. TD Bank's refusal to release those funds will undermine the purposes of the USDA in making a loan to Defendants, including, but not limited to, improving and maintaining Elsmore Estates.

13. A garnishment action may be deemed "commenced against" the United States for purposes of 28 U.S.C. § 1442(a) even if the relevant federal agency is not named as a defendant or garnishee when the consequences to the federal government are sufficiently real. *See Nationwide Investors v. Miller*, 793 F.2d 1044, 1047 (9th Cir. 1986).

Therefore, this action now pending in the Maine District Court in Portland, Maine is properly removed from that court to this Court, pursuant to 28 U.S.C. §§ 1441, 1442(a)(1) and 1446.

Dated: May 8, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2013, I electronically filed the foregoing with the Clerk of Court using the Court's newcases.bangor@med.uscourts.gov email inbox and, in addition, I provided written notice by U.S. Mail, postage prepaid, to the following:

Clerk
Penobscot County Superior Court
78 Exchange Street
Bangor, ME 04401

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United States Attorney

/s/ John G. Osborn, AUSA